S.B.CIVIL WRIT PETITION NO.5173/2003.
(Regional Manager, RIICO Ltd. v. Judge, Industrial Tribunal-cum-Labour Court, Jodhpur and Another.

DATE OF ORDER: JANUARY 14, 2005.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Sanjeev Johari, for Petitioner.
Mr.Vijay Mehta, for Respondent No.2.

The instant petition has been filed by the petitioner praying, inter alia, therein that the award dated June 6, 2003 (Annex.P/1), passed by the Labour Court may be quashed and set aside and the claim petition of Respondent No.2 – Neena Agarwal (applicant) may be rejected.

The facts giving rise to the instant petition as alleged by the Petitioner – Regional Manager, RIICO Ltd., are that (the applicant) - respondent No.2 was appointed on a fixed pay in the year, 1996, in the Office of RIICO, Abu Road, through M/s. Private Security Services, Abu Road, on contract basis, where she was given the work of Stenographer/Junior Assistant. The applicant worked till December 31, 1998. On 31st December, 1998, her services were terminated by a verbal order.

During the course of conciliation, the Petitioner – RIICO admitted that she was given work on contract basis through M/s. Private Security Services, Abu Road and that contract came to an end in the month of July, 1998. The applicant - respondent No.2 stated that she worked for 240 days, but prior to termination of her services, neither she was given a Notice of one month, nor retrenchment amount in lieu of one month notice was given to her.

It was submitted by the Regional Manager, RIICO Ltd.. Abu Road, that in

the year, 1996, the applicant - respondent No.2 was given work on contract basis through Security Services and the RIICO did not give any appointment to the respondent No.2. Not only that, even no relationship of employer and employee was established with the applicant – respondent No.2. The contract of the respondent No.2 was with the Security Services, which came to an end automatically on the expiry of contract period. It was also stated that the respondent No.2 has not worked for 240 days, as alleged by her in the memo of claim. After expiry of the contract period with the Security Services, the respondent No.2 did not carry out any work with RIICO.

During the course of proceedings before the Labour Court, an affidavit of one Mr.S.L.Ahuja the Senior Regional Manager, was filed, in which during cross-examination, he stated that there was no written contract of work with Neena Agarwal – respondent No.2. He also stated that whether she worked regularly or not, is not known to him. Apart from that, for appointing stenographer, no work order was issued. He also expressed his inability to say as to how many days the applicant (now respondent No.2) has worked with RIICO. Lastly, he stated that the name of the applicant does not find place in the muster roll.

It is submitted by the learned counsel for the petitioner-RIICO that the finding of the learned Labour Court that the petitioner-RIICO has failed to prove that the applicant - respondent No.2 worked with it only on the basis of the contract some Sercurity Services, is absolutely erroneous and perverse.

It is further submitted by the learned counsel for the petitioner-RIICO that the applicant - Respondent No.2 essentially came with the case that she worked for more than 240 days with the petitioner-RIICO and, thereafter, removal of her services by oral order dated December 31, 1998 is violative of legal provisions of

the ID Act. In her claim-case, respondent No.2 (applicant before the Labour Court) never uttered that she was appointed by the petitioner -RIICO. It has been submitted that she was appointed on the fixed salary in the year, 1996 at RIICO Office, Abu Road. As per the claim petition, she continued upto December 31, 1998 and thus, worked for more than 240 days. It has also been submitted that even if it is accepted fore the sake of argument that she worked on the basis of some contract between the petitioner RIICO and the Security Agency , yet she comes within the definition of workman and she will be deemed as a workman of the Principal employer, i.e., RIICO only.

It is also submitted that the (applicant) - respondent No.2 has not produced any appointment order. She has also admitted that she never got any appointment letter from RIICO. Apart from that, her name does not find place in the salary register as well as attendance register. In this view of the matter, the learned Labour Court has wrongly concluded that the petitioner RIICO failed to prove the appointment of the (applicant) respondent No.2 through some Security Services on contract basis. Apart from that, through out the proceedings before the Labour Court, RIICO kept the stand that the respondent No.2 worked with it only through the Security Services on the contract basis only. Further, the respondent No.2 herself altogether failed to prove and substantiate that the appointment was given directly by the petitioner RIICO. As a matter of fact, she was employed by the Security Services and if on the contract basis between the petitioner and some Security Services, she has worked, then the same cannot be deemed as working of a workman so as to attract the provisions of the Industrial Disputes Act, 1947.

It is submitted that the (applicant before the Labour Court) respondent No.2 has failed to prove that she ever completed more than 240 days as a workman on the basis of her appointment by petitioner RIICO.

Lastly, it has been submitted by the learned counsel for the petitioner-RIICO that it appears that the learned Labour Court has passed the impugned award with an absolute one sided notion that it was the duty of the petitioner RIICO alone to prove the working of the (applicant) respondent No.2 on contract basis. According to the learned counsel, the learned Labour Court failed to appreciate the legal position that it was the respondent No.2 alone who could not prove her working on any direct employment either by appointment letter or by any other document such as getting salary from the RIICO. He submitted that that the claim petition and contents of the reply to the claim petition, as well as the entire documentary evidence available on record have not been looked into properly and in a right and legal perspective way by the learned Labour Court, which resulted into the gross injustice to the petitioner.

In support of his contention, learned counsel for the petitioner has referred to the cases of Steel Authority of India Ltd. And Others v. National Union Waterfront Workers and Others ([2001] 7 SCC 1), Mathura Refinery Mazdoor Sangh v. Indian Oil Corporation Ltd. Mathura, ([1991] 2 SCC 176), Dena Nath and Others v. National Fertilisers Ltd. And Others ([1992] 1 SCC 695), Chambal Fertilisers & Chemicals Ltd. v. State of Rajasthan (2004 (103) FLR 453), State of Rajathan v. Rajpal Singh & Another (2003 WLC (Raj.) UC page 200) and M/s. Rajathan Co-operative Dairy Federation Ltd. v. The Judge, Industrial Tribunal & Labour Court, Bikaner (2001 (90) FLR 33).

The aforesaid authorities are of no help to the learned counsel for the petitioner-RIICO because the learned Labour Court has given a specific finding that the applicant (now respondent No.2) has worked with the Regional Manager Office-RIICO and the termination of the services of Kum.Neena Agrawal by the RIICO w.e.f. 15.7.98 is absolutely illegal, so, the RIICO was directed to re-instate

her back in the service with 30% back wages from the date of reference, i.e., 20.1.2001.

The learned Labour Court has also made a specific fact finding inquiry and stated that though the applicant has not been able to prove that she was appointed on the post of Stenographer in the year, 1996 by the RIICO and she worked continuously upto December 31, 1998, but there is no dispute with regard to the carrying out work by the applicant with the RIICO . The RIICO itself has not denied that the applicant has not worked with it. The stand of the RIICO that the appointment of the applicant is not on the record and she was not given employment by the RIICO directly. But, she has worked on contract basis through Security Services. The Labour Court found that the RIICO has also not produced any documentary evidence to prove that on which date the applicant was employed through Security Services, nor any voucher , work order or written contract has been submitted that respondent No.2 (applicant) was employed through Security Services. Lastly, the Labour Court recorded a finding that the RIICO has also not been able to prove that the appointment of the applicant was on contract basis and she worked according to that contract.

Learned counsel for the (applicant)- respondent No.2 has raised three preliminary objections to the effect that the petitioner-RIICO has challenged the finding of facts arrived at by the Labour Court on the basis of evidence and material on record. The findings of fact are not permissible to be challenged in the writ petition. The petitioner-RIICO has also challenged the finding of fact arrived at by the Labour Court that the respondent No.2(applicant) was not a contract labour and she has completed 240 days of service. Secondly, the petitioner has mentioned new and disputed facts which do not find place in the written statement. The petitioner-RIICO has concealed this fact that it has narrated fresh

facts for the first time in the writ petition. So, the instant petition of the petitioner deserves to be dismissed on this ground alone. Thirdly, the respondent No.2 (the applicant) has stated that the petitioner-RIICO has challenged the findings with reference to averments made in the claim petition, reply, documents and oral evidence produced before the Labour Court, but has not filed this material before this Court. Thus, the documents on which the entire petition is based, have been with-held by the petitioner.

It is submitted by the learned counsel for the (applicant) respondent No.2 that the finding arrived by the learned Labour Court on the basis of the evidence, is a finding of fact, which cannot be challenged in the writ petition.

It is further submitted by the learned counsel for (applicant) - respondent No.2 that the petitioner-RIICO even failed to name the alleged contractor through whom the respondent No.2 (applicant) is alleged to have been employed. Apart from that Mr.S.L.Ahuja, Senior Regional Manager has admitted in his cross-examination that there was no contract in writing with the (applicant) respondent No.2 He has further deposed that no work order was given to any Contractor for Steno. He has also deposed that he has no document in his possession to show that the (applicant) respondent No.2 came through any Security Agency. He even failed to name the Security Agency.

It is also submitted that the petitioner-RIICO has made submissions with reference to the claim filed by the respondent No.2,(applicant), but has not filed a copy of the claim In the absence of this significant document, the submissions of the petitioner-RIICO cannot be appreciated. The respondent No.2 has clearly stated that she was appointed by the petitioner-RIICO. Apart from that, Mr.Ahuja has also admitted during the course of cross-examination that the respondent No.2 had worked with RIICO. The finding of the Labour Court that the respondent

No.2 was not employed through any contractor has been arrived at on the basis of oral and documentary evidence. Such finding of fact cannot be challenged in the writ petition. The finding about the nature of employment is based on evidence on record. The petitioner-RIICO claims that the respondent No.2 (applicant) was engaged through Contractor, but it has failed to name such a Contractor.

I have heard learned counsel for the parties. Mr.S.L.Ahuja, Senior Regional Manager, RIICO, has stated in his deposition, during the course of cross-examination (Annex.R/1) that there there was no written agreement. The applicant has worked through Agency, but which was that Agency, is not known to him. He further stated whether that Neena (applicant) continuously worked or not, that too is also known to him. At that time, who was the Officer, is also known to him. Then, he stated that it was B.L.Kothari. He also stated that no work order was issued for appointing Stenographer. How much the applicant worked, is also known to him. Lastly, he stated that he has no document to show that through which Security Agency, the applicant was engaged and her name does not find place in the attendance register of the daily wagers.

It is significant to note that there is no rebuttal to that deposition. Apart from that, the RIICO submitted a note-sheet seeking approval for giving appointments on contract basis, but that note-sheet does not find any date. Not only that, even the note-sheet does not say whether the approval for giving appointment was received by the RIICO or not. Only voucher bills of Sharp Security Services and Goliath Detectives have been submitted, but these bills pertain to the payment of the Security Guard. It is not clear from the bills that the Stenographer was appointed and the payment was made for the work of Stenographer.

There is no dispute to the effect that the applicant has worked with the

RIICO. The RIICO itself has not denied this fact. Now, saying of the RIICO that the applicant (respondent No.2) was not given any appointment on record, but she has worked on a contract basis, is absolutely incorrect. The RIICO has also failed to produce any written contract, work order or vouchers of the pay bill, in respect of applicant (respondent No.2), in order to make its position clear. In addition to this, the RIICO has also failed to produce any document as to what was the nature of the appointment of the applicant (respondent No.2). The only document submitted by the RIICO is the note-sheet, which ,at all, does not make the position clear. the position. It may be that the applicant (respondent No.2) had been given appointment on regular basis, therefore, no document was produced by the RIICO. The applicant (respondent No.2) has clearly stated that she was made payment on the basis of the voucher bills. But the RIICO has not produced any document pertaining to voucher bills. Apart from that, there is no rebuttal of the claim of the applicant by the RIICO. Not only that, even the RIICO has not been able to prove the case that the applicant (respondent No.2) has been given appointment through M/s. Private Security Services, on contract basis. In absence of any rebuttal by the RIICO, the learned Labour Court has rightly given the findings that the termination of the services of the applicant applicant - Kumari Neena Agrawal (respondent No.2) by the RIICO w.e.f. 15.7.98 is illegal. She should be taken back in service and be given 30% back wages from the date of the reference, i.e., 20.1.2001. Thus, in this view of the matter, the Labour Court has rightly held that the applicant (respondent No.2) Kumari Neena Agrawal is a workman within the definition of the Industrial Disputs Act, 1947, as she has worked for 240 days as a workman with the RIICO. The findings of the learned Labour Court do not call for any interference.

For the reasons mentioned above, I do not find any merit in the instant

petition. The same is hereby dismissed. There will be no order as to costs.

(R.P.VYAS),J.